

Members present: Vern Gardner, Craig Wilson, Brian Boyle, Brett Costa

Members absent:

Staff: Heather Ross, Code Enforcement Officer

The meeting was called to order at 7:02 p.m.

Mr. Gardner advised the applicant there are only four members of the Board, therefore four like votes are needed for the application to be approved. The applicant agreed to continue.

Mr. Wilson noted Title 16.1.5.2.F.4 authorizes the Board of Appeals to hear the following Miscellaneous Variation.

ITEM 1 – Jonathan & Karen Payne – 8 Friend Street, Map 10 Lot 52, R-U

Jonathan and Karen Payne requesting a Miscellaneous Variation to the terms of Title 16 Section 3.2.4 in order to construct a 5' x 6' addition and 5' x 4' landing.

Mr. Payne explained the 5x6 entryway was existing when they bought the house. They wish to remove and rebuild the same size, and move from adjoining lot line by 32" and adding the 4x5' landing.

There was no public comment. The CEO provided:

1. This is a nonconforming lot with a nonconforming structure;
2. The front yard setback is 30 feet; the existing structure is 3 feet from the front property line. The proposed structure would be no closer than what currently exists.
3. The side yard setback is 5 feet; the existing structure is 5 feet from the property line. The proposed structure would be no closer than what currently exists.
4. In the R-U zone the maximum building coverage is 20%, with existing coverage of 30%. The proposal would not increase the building coverage as the landing will not be covered.

Mr. Boyle stated he believed the proposal is a non-issue.

Mr. Wilson asked about the minimum egress for landings. The CEO stated the minimum is 3'x3'. Mr. Wilson agreed the proposed structures are no closer than existing structures to the setbacks.

Mr. Gardner asked how accurate the setbacks and property lines from the ROW, noting it appears structures may be located in the ROW. The CEO explained this cannot be confirmed as the GIS and tax maps vary and are not accurate measurements. Mr. Gardner agreed and suggested this would have to be surveyed and, if structures are within the ROW, does the BoA have jurisdiction to make a decision.

The CEO stated the ordinance does not require a survey for Board determination because of the cost to applicants, and information submitted is to the best of their knowledge. Mr. Gardner asked if the applicant had ever discussed the ROW and the distance from his house.

Mr. Payne said he had not. He noted he had been before the BoA previously regarding moving his garage back from the Row and this issue was not brought up then. Mrs. Payne noted within the past few years the utility poles were moved from their previous location closer to the home, so using them as a potential ROW location would not be accurate. The home was built in 1750 and moved from the Navy Yard to the current location 125 years ago, before there was an established ROW.

Mr. Gardner explained he is concerned about public safety if the structure is too close to the road. He would vote in favor of the proposal with conditions.

Mr. Wilson asked how the 3-foot setback was measured. Would adverse possession apply in this case?

Mr. Gardner explained adverse possession would not apply to state agencies (ROW) or railroads.

Mr. Payne said the setback was measured from the edge of the retaining wall to the ROW.

Mr. Boyle moved to grant Jonathan & Karen Payne, 8 Friend Street, Map 10 Lot 52, in the R-U zone a Miscellaneous Variation to the terms of Title 16 Section 3.2.4 in order to construct a 5'x 6' addition to replace the existing structure, to be located 32" to the east, and which shall be the exact dimensions of existing structure, and a 5'x4' landing.

Mr. Costa seconded

Motion carried unanimously

Findings of Fact

1. Jonathan & Karen Payne, 8 Friend Street, Map 10 Lot 52, in the R-U zone requested a Miscellaneous Variation to the terms of Title 16 Section 3.2.4 in order to construct a 5'x 6' addition and a 5'x4' landing.
2. This is a nonconforming lot with a nonconforming structure;
3. The front yard setback is 30 feet; the existing structure is 3 feet from the front property line. The proposed structure would be no closer than what currently exists.
4. The side yard setback is 5 feet; the existing structure is 5 feet from the property line. The proposed structure would be no closer than what currently exists.
5. In the R-U zone the maximum building coverage is 20% with existing coverage of 30%. The proposal would not increase the building coverage as the landing will not be covered.
6. Karen Payne testified the building was built around 1750 and moved to the current location from the Navy Yard 125 years ago.
7. Board members discussed whether the structure was in the ROW and whether the BoA has jurisdiction.
8. The applicant stated he was never questioned about the structure's location in regard to the ROW.
9. The existing utility pole was moved closer to the structure in recent years, which makes it appear the structure may be in the ROW.

Mr. Costa moved to accept the Findings as read

Mr. Boyle seconded

Motion carried unanimously

Conclusion

In accordance with Title 16.7.3.5.5.A, the Board finds the proposed replacement of the existing entrance way will be no closer to the front or side yard setbacks, and grants the Miscellaneous Variation.

Mr. Boyle moved to accept the Conclusion as read

Mr. Costa seconded

Motion carried unanimously

Mr. Gardner noted this approval is not the issuance of a building permit, and any aggrieved party has 45 days to appeal this decision to Superior Court.

Minutes: February 25, 2014

Mr. Wilson moved to accept minutes of February 25, 2014 as amended

Mr. Costa seconded

Motion carried unanimously

Mr. Wilson moved to adjourn

Motion carried by all members present

The Board of Appeals meeting of March 25, 2014 adjourned at 7:47 p.m.

Submitted by Jan Fisk, Recorder, March 26, 2014